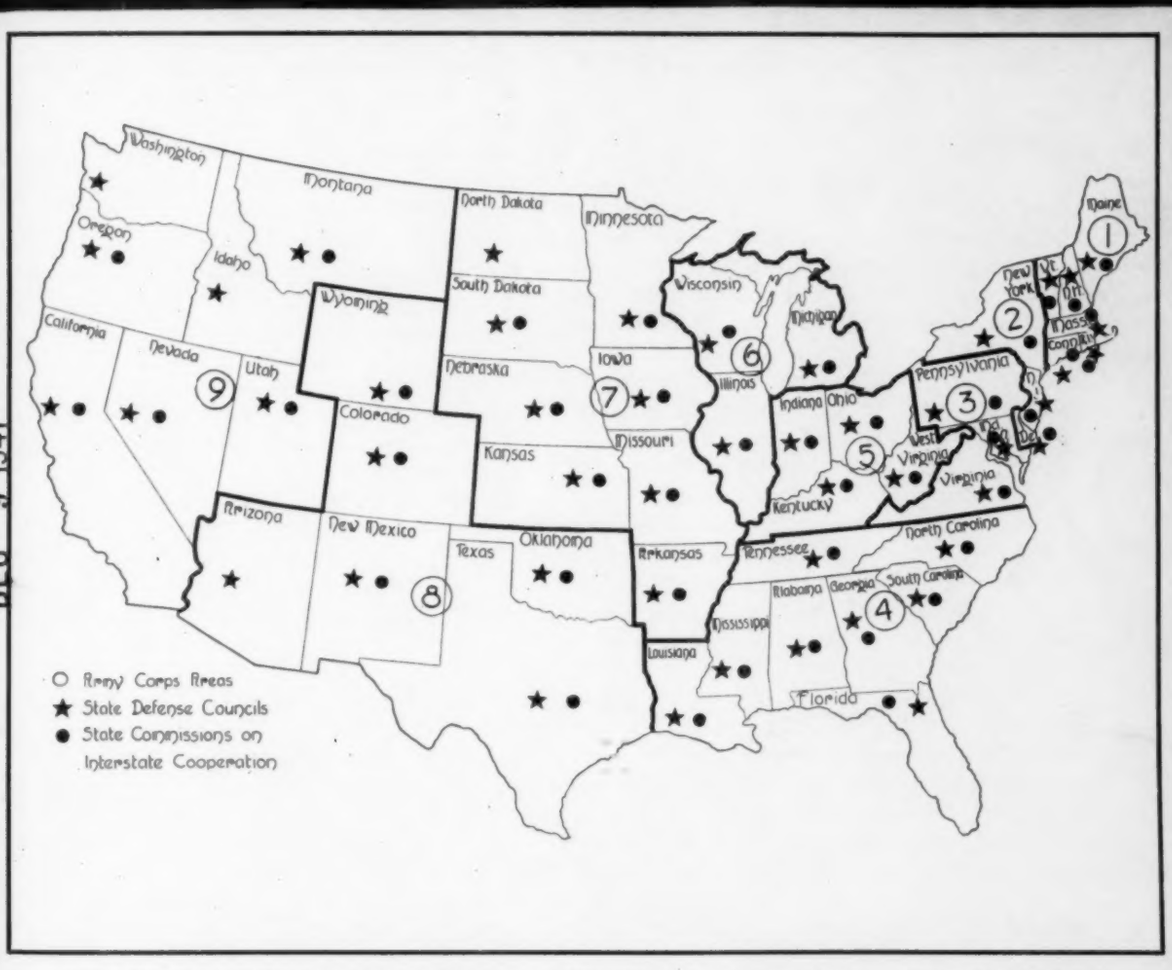
State Government



STATES ARE ORGANIZED FOR COOPERATION IN DEFENSE

THE COUNCIL OF STATE GOVERNMENTS SERVES THEM ALL

(See inside front cover and article on page 273)

DEC 9 1941

IN THIS ISSUE

Contributors and Articles

SIMEON E. LELAND, head of the Department of Economics of the University of Chicago, subjects the field of intergovernmental fiscal relationships to a forthright analysis in "Trends in State-Local Fiscal Relationships" (*page 259*). This article is the text of Mr. Leland's address to the annual meeting of the American Municipal Association which was held in Chicago last month. As a former Chairman of the Illinois Tax Commission, Mr. Leland knows the practical as well as the theoretical side of the problems he discusses. He points to the absence of effective fiscal relationships between the various levels of government as an indication of the prevailing lack of appreciation of their financial interdependence. He suggests that the new fiscal problems arising from the defense effort require the cooperation of all levels of government if they are to be solved satisfactorily.

HAROLD C. OSTERTAG, Chairman of the New York Joint Legislative Committee on Interstate Cooperation, in this issue discusses "State Rights and Interstate Cooperation" (*page 261*). Mr. Ostertag is one of the pioneers in the interstate cooperation movement. Since 1936 he has been Chairman of the New York Committee and from 1938 to 1939 he was Vice-President of the Council of State Governments and Chairman of its Board of Managers. Few persons can speak with greater authority on this subject than Mr. Ostertag. His article is based on an address before the National Association of Motor Bus Operators in Chicago.

HOW A PLAN for the conservation of Atlantic seaboard fisheries has been put into effect by an interstate compact which has already been approved by seven States is related in "Cooperation Wins Conservation Battle" (*page 264*). This article recounts the background of the movement for the protection of the valuable commercial food fisheries of the East Coast from over-fishing and resulting depletion. Because the Federal Government lacked jurisdiction and because individual state action had proved ineffective, no steps were taken to solve the problem until a plan for cooperative interstate action was developed by the Commissions on Interstate Cooperation and the Council of State Governments.

THE SUCCESS of another cooperative venture of the States is reported in the article, "The Midwest Dairy Agreement" (*page 267*). This story tells of the origins of the agreement and of the work of the Interstate Cooperation Commissions and the Council of State Governments in drafting it and securing approval of its provisions. The agreement establishes and gives official recognition to an improved set of dairy standards which may be met by milk producers who wish to sell in new, out-of-state markets.

MORTIMER M. KASSELL, Deputy Commissioner and Counsel of the New York Department of Taxation and Finance, in "A Solution of the Double Domicile Problem" (*page 268*) proposes a "model bill" for the solution of interstate controversies concerning death taxes of persons who are considered to be domiciled in more than one State. The article discusses the problem of multiple death taxation by the States and reviews the pertinent court decisions.

HARRY F. KELLY, Michigan's Secretary of State, describes the new methods adopted by his department for filing and preserving motor vehicle records in his article, "Microphotography in Record-Keeping" (*page 270*). Michigan laws require that certain of these records be kept for several years. Under the old system, the files became cumbersome and difficult to use. Under the new system, records are photographed in miniature and filed in a fraction of the space formerly required.

THE RECENT meetings of the National Association of Attorneys-General and the National Conference of Commissioners on Uniform State Laws are reported in "State Law Officials Meet in Indiana" (*page 271*). One of the principal items on the agenda of the Attorneys-General meeting was the discussion of defense problems facing Attorneys-General of the States. Consideration was given to the responsibilities of law officials for insuring maximum efficiency, while maintaining democratic traditions, in the defense effort.

The National Conference of Commissioners on Uniform State Laws heard committee reports indicating that the number of adoptions of uniform state laws was larger in 1941 than in any other recent year.

THE ACTIVITIES of the Far West Regional Defense Conference of state officials, held in San Francisco last month under the sponsorship of the Council of State Governments, are reported in "Western States Study Defense Situation" (*page 273*). The article also outlines problems which were being discussed at the Rocky Mountain Regional Defense Conference in Denver, as this issue of STATE GOVERNMENT went to press.

On the Cover

THE MAP on this month's cover shows the nine Army Corps Areas into which the 48 States are divided; also shown are Defense Councils and Interstate Cooperation Commissions of the States.

State Government

THE MAGAZINE OF STATE AFFAIRS

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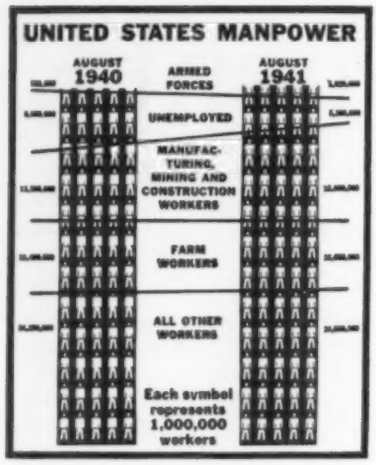
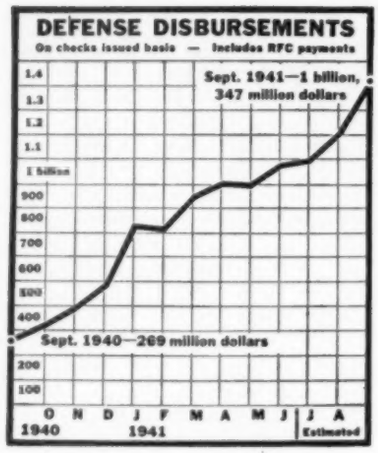
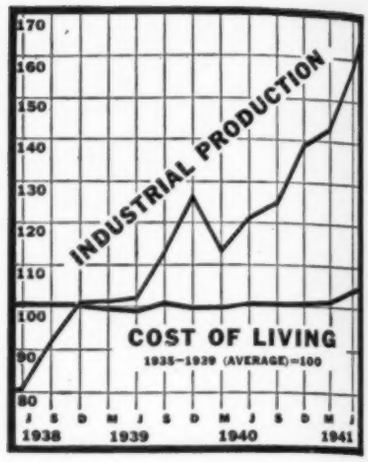
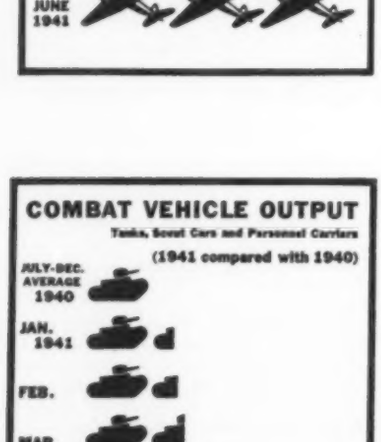


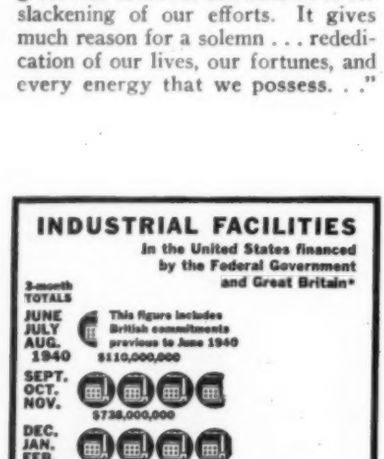


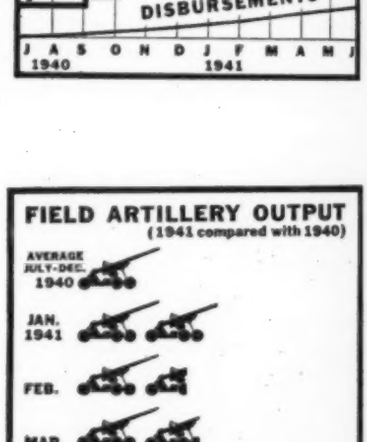


THE ARSENAL OF DEMOCRACY

At the end of the second quarter of 1941, with "tooling up" completed, American industry moved into high gear in mass production of mechanized equipment so vital to total defense. The OEM charts on this page show trends of recent months in important phases of the production-for-defense program. In the words of Governor Price of Virginia: "The defense picture from both the national and state viewpoints gives little cause for discouragement. It gives less cause for satisfaction or for slackening of our efforts. It gives much reason for a solemn . . . rededication of our lives, our fortunes, and every energy that we possess. . ."







Trends in State-Local Fiscal Relationships

Financial Aspects of the Defense Program Require Close Federal-State-Local Collaboration in Taxing and Spending[1]

By Simeon E. Leland

Chairman of the Department of Economics, the University of Chicago

Events of the last twenty-six months make it necessary to examine the subject of intergovernmental fiscal relationships in a new setting. The relationships are the same relationships as before but the stage and the scenery surrounding them have changed. The nation is now engaged in a mighty effort to divert its resources and available man power to defense. So starkly have these changes impressed themselves upon us that the probability of sensing the shortcomings of the traditional arrangements between our various governments has increased. Some matters once vague may now seem obvious to those who will but hastily reflect upon the situation in which some governments now find themselves. Critical conditions sometimes produce solutions for old problems. Without creating such expectations now, it may not be too much to hope that the old dilemmas may be thrown before us in bold relief.

It is impossible, moreover, to discuss state-local fiscal relationships apart from the relationships of these units to the Federal government and of the federal unit to them. The problem is completely intergovernmental and does not affect merely the lesser units in the political hierarchy nor only the predominant governments—it affects them all. One reason for the recurrence of both political and fiscal difficulties among governments is the assumption that their affairs, their powers, their duties, their finances are not interrelated. However it may be organized, the role of government is unitary. Economically the financial operations of the "pieces" cannot be divorced from the whole. The subject can in reality only be discussed significantly as the relationships among all of the units in the political hierarchy are canvassed. This is especially true since the activities of the national government condition the revenue and expenditure policies of the state-local agencies.

The war, or defense effort, has limited the income from which state-local taxes may be paid. Through its tax laws it has fixed the sums available for expenditure on the necessities and the so-called "good things of life" for a large fraction of the population, and in the future will affect many more. It is determining what things are available for purchase by civilians and other governments. It is fixing the quantity, the quality and the terms of purchase. In some instances the price is being determined. Both state-local governments and individuals cannot spend as they will, nor purchase many things they would like to buy. Even the labor supply, for the production of many goods is being restricted. This affects the ability of some governments to serve their patrons and of individuals to satisfy their wants. Rising costs cause some to postpone undertakings while others are induced to buy before terms become less favorable than now. The national government has requested other governments and individuals to avoid competitive undertakings, to curtail public works where possible and to assist defense where this could be done. Priorities and the accompanying difficulties in securing the allocation of materials have implemented this policy. This should mean a reduction in capital outlays and a decline in state-local expenditures in numerous categories. It is a request, moreover, in the national interest, and in its observance the state-local governments will also contribute to national welfare.

The improvement in national incomes, in employment and production due largely to the defense program is being absorbed in increasing degree by federal taxation. The resources available for state-local taxation—or the funds from which such taxes are paid—may even be less than in other years. And to the extent that inflation is to be avoided by fiscal means, funds available for state-local taxation will tend to decrease rather than increase as business improves. If this is not the case, and it may well not be so much the worse

[1]An address to the annual meeting of the American Municipal Association in Chicago, October 25, 1941.

for us in the end, we will then pay both higher taxes and higher prices for defense. But in spite of their severity the high taxes for defense will not be as burdensome nor as arbitrary in their impact as the high prices accompanying inflation. The losses inflicted upon citizens by rising prices produce no revenue for the government yet they increase the cost of goods for defense and add to the total cost of rearmament. To meet these costs additional taxes must be imposed and more money must be borrowed. It is important, therefore, to avoid the creation of these conditions. Even pleas for the reduction of state-local taxes may need to go unheeded, if at appropriate times and in a proper manner these taxes can help sterilize personal incomes so as to avoid inflation. But great care must be exercised in the application of this principle. It cannot be used to justify the continued levy of taxes to support wasteful, uneconomic, or competitive services, nor even to maintain a level of expenditures not justified by the conditions of the times. Nor should all taxes be continued merely because they have been employed or have become traditional. Some state-local taxes so fail to meet the requirements of sound measures that the quicker they are abolished, the better for all concerned. Taxes differ, too, in their ability effectively to cope with cyclical problems. The difficulty with these generalizations is that they are necessarily vague due to limitations of time and space. However it should be clear that the maintenance of the status quo with respect to the level and pattern of state-local taxation even for their cumulative assistance in minimizing the danger of inflation cannot be championed categorically. To the extent that state-local levies are employed the leadership of the Federal Government should be followed. State-local units cannot act alone. If they seek to do so, they will probably do the wrong things at the wrong time.

Federal Claims Now Paramount

Whatever may be thought of this condition it is certain that the needs of the national government are paramount. It has first claim upon both our productive resources and upon our resulting incomes. State-local units are residual claimants —they take what is left no matter how important are their services to us in normal times. And, as the burdens of federal support increase, the role of other governments becomes more difficult to maintain. This can be seen easily in crisis periods; it appears to be a result of our political evolution as well. We have been developing into a nation instead of into a federation of states. Local services, too, have evolved with the metropolis. Both trends are closely related to the facts of economic life. The old relationships between our governments may need modification; they at least need examination.

Defense May Hamper Local Programs

Why is it that defense may interfere with state-local tax collections or their programs of public expenditures? Why is it that defense may even dry up the sources of public loans? It is in part the reflection of a change in the marginal worth of state-local government. Citizens, in short, desire adequate defense under the auspices of the national government far more than they desire many other things, particularly those things dispensed by state-local units. It would be too bad were the activities of the subordinate units not to conform to this desire. Likewise, it would be unfortunate if in the interest of promoting defense many vital services of state and local governments were impaired. Many of these activities are so ever present that we tend to take them for granted, but the impairment of such services as fire, police, sanitation, highway maintenance and so on, could easily undermine both adequate defense and population morale. It is to be hoped that these consequences may be avoided. Nevertheless, the impact of the defense program will be felt by all units of government. Some commodities they will not be able to secure; others will be available only in restricted quantities. Many decisions will no longer be made freely—they will be conditioned by and contingent upon the requirements of national defense. At the moment, the requirements of the national government are paramount. Other units recognize this.

The limits to defense production are physical; they are not financial. On the one hand the limits are determined by the capacity of the industrial system to produce; on the other, by the requirements of the producers for the maintenance of productive efficiency. Financial limitations at the moment do not exist to curtail the national effort. Nevertheless, the national efforts condition and determine what the other units may do. These limitations are primarily of economic and not of political origin.

(Continued on page 276)

State Rights and Interstate Cooperation

The Development of Effective Machinery for Interstate Action Has Strengthened State Rights by Improving State Competence

By Harold C. Ostertag

Chairman, New York Joint Legislative Committee on Interstate Cooperation

The subject I am about to discuss is very close to my heart and constantly on my mind. Perhaps this is due to the fact that I am a state official, a state legislator to be exact, and because I have had an opportunity of measuring the worth of state government. As an active participant in the work and program of the Council of State Governments and the Commissions on Interstate Cooperation, I firmly believe that such machinery for interstate cooperation is essential to the very principles of our form of government.

To talk of state rights during this period of national emergency and in the shadow of the clouds of war probably seems a little strange to some of you when you remember the vast expansion of the functions of the Federal Government stimulated by the last World War—and when you remember that the trend toward centralization in the last two decades had its roots in that war and its aftermath. . . . But I have deliberately chosen to talk about "state rights and interstate cooperation" because I believe they are closely related to the cause for which we are working—the preservation of democracy and self-government.

First, I should explain what I mean by state rights. The expression "state rights" is one of the many we use constantly without seeking to define it. It is and has been an emblem, a political battle-cry and, in the opinion of some, it is now antiquated, a relic of the horse and buggy days—a dying platitude. Always, in hearing the expression "state rights," we think of something more or less antagonistic to the national government; we think of state action as an alternative to national action. Many Americans, particularly those who are constitutionally-minded, think of the Tenth Amendment to the Federal Constitution and the use of that amendment by the courts as denying certain powers to the national government because they were reserved to the States. At a memorable dinner, in the spring of 1830, observing the birthday of Thomas Jefferson, Secretary of State Martin Van Buren in a toast proposed: "Mutual forbearance and reciprocal concessions: through their agency the Union was established. The patriotic spirit from which they emanated will forever sustain it."

While I am aware that the phrase "state rights" is a result of our federal form of government—a form of government characterized by a division of the powers of government between the nation and the States—I *do not* believe that the ultimate justification for the existence of the States lies entirely in either our traditions or in our legal structure . . . although, we cannot afford to ignore either. Certainly, we all know that the Supreme Court decisions of the last two or three years seem to eliminate in large part, any constitutional checks upon the expansion of the functions of the national government. The preservation of the States and their functions is no longer to be obtained in the courts under the Constitution. Today, the place of the States will be determined in large part by Congress, or in other words, by public opinion. Moreover, the support of public opinion will be predicated upon the usefulness and the effectiveness of the States as units of government in our federalism.

I believe we all know that without the spirit of tolerant compromise, democracy cannot survive. The rights of States, as well as the rights of individuals, are preserved and protected only by the harmonious cooperation of conflicting interests.

My understanding, therefore, of the term "state rights" is simply that it is an expression of faith in the usefulness of our States under our system of government and a belief that the state governments should be given every opportunity to demonstrate their true worth and effectiveness. In other words, I place my emphasis not upon legalism nor upon tradition, but upon practical considerations.

It has been considered somewhat axiomatic that democracy has seemed to flourish best where the government is close to the people. Aristotle spoke of the small city-state as the natural environment of democratic government. The large empires, he thought, must necessarily be monarchies of the absolute type. While the improvements in methods of communication and transportation since Aristotle's day have made possible an expansion of the area of democracies, many people still feel that democracy primarily means government responsible to the people and that responsibility, and awareness, and popular participation in government are best secured through local government—a government close to the people. President Coolidge once said, "If the Federal Government should go out of existence, the common run of people would not detect the difference in the affairs of their daily life for a considerable length of time, but if the authority of the States was struck down, disorder approaching chaos would be upon us within twenty-four hours. No method of procedure has ever been devised by which liberty could be divorced from local government."

Federalism Permits Diversification

The pragmatic justification for our federalism in the United States is and has been the size of our nation. The United States has the largest land area of any democracy in the world with the exception of Canada (and Canada is also a federalism). We have a population of 132 million people and probably more than any other democratic nation, our nation is characterized by environmental differences that political speakers often describe as "from the rock-bound coast of Maine to the sunny shores of California." It is entirely possible to say that our federal form of government was one of the factors that paved the way for the expansion of our democratic nation over such a large land area. Certainly, the governments of forty-eight States have provided us with a useful laboratory for experiments in democratic government. In view of all these circumstances, I am confident we all agree on the utility and, even further, on the potentialities of our States.

But in order to secure the full advantages of our federal system, we must take into consideration the second point that I made, namely: that the States must be given full opportunity to prove their effectiveness. I do not argue that we should seek to weaken the national government or even to prevent the evolution toward expanded national functions where the logic of events points unmistakably to that result. I do not argue that state action or jurisdiction should be sought as an alternative to national action or jurisdiction. I desire only to point out that we should not bind the States from full effectiveness by constitutional and legal restraints—that it would be detrimental to a balanced development of our federal system to bind state and local government while freeing a national government. It seems to me that we should be most careful not to lean toward centralization on every occasion when we encounter difficulties. It seems to me that we have tended to over-simplify and when a problem appears difficult immediately we say that the Federal Government had better do it. Nor do I think that the answer is necessarily the contrary one—that we should always shout, "Hands off! The States can do it." Quite often it may be a matter for both the nation and the States, for cooperation both between the nation and the States and among the States themselves. It is essential that there be complete coordination among all levels of government on a strictly unselfish plane. To sum up, I am arguing simply for a flexible federalism, one able to adapt itself to changing situations and not unbalanced by too eager adherence either to centralization or to state action.

Some of you may say that the States have had plenty of opportunity to prove themselves and have failed to take advantage of that opportunity. That argument, it seems to me, ignores the natural lag of government behind the social and economic conditions of its environment. Moreover, it must be remembered that the States were not free—that until recently the due process clause of the 14th Amendment to the Federal Constitution served as a very effective check upon state regulation. And too, despite the wisdom of the Founding Fathers, they failed to provide for any formal or legal machinery in our national constitution through which the States could cooperate with one another. So that whenever interstate cooperation was needed—and with modern scientific improvements, problems of government expanded across state lines—state action broke down. Such interstate cooperation as existed was informal and spasmodic.

On the other hand, during the last six years, since official machinery for cooperation among the States has been developed through the Council

of State Governments and its component state Commissions on Interstate Cooperation, we find that interstate cooperation has made very definite and effective progress. In short, the States are today better equipped to solve problems of government involving more than one State than ever before.

Let me illustrate. There has, in the past few years, been a great howl about interstate trade barriers. There is no doubt that expanding state regulation, on the one hand, and contracting economic opportunities, on the other, has generated the rise of state trade barriers or . . . in many instances . . . of laws and regulations that were called trade barriers by those who did not like the particular regulations in question. I think I should take this opportunity to say to you that some of the groups and organizations which are raising the greatest fuss about trade barriers are the very people who, pursuing their own selfish interests, succeeded in placing such laws on the statute books.

I do not want to give the impression that there was not a legitimate protest against so-called trade barriers or discriminatory state laws nor that there were not legitimate reasons for such a protest. As usual, there was also an immediate demand that the Federal Government do something about it either by action before the courts or by congressional legislation. This demand ignored some very important practical considerations. For one thing, it is exceedingly difficult to define an interstate trade barrier and many of the laws that some called trade barriers have proven, upon further examination, to be legitimate efforts at state regulation with no attempt to discriminate against the citizens of other States. Secondly, you cannot generalize about trade barriers or alleged trade barriers. Each law complained against, usually has to be examined in the light of the particular situation to which it applies and often a solution can be reached on the basis of that particular situation. Suffice it to say, that the Council of State Governments called a National Conference on Interstate Trade Barriers in April, 1939. Since that time the Commissions on Interstate Cooperation in each State have turned their efforts to the trade barrier problem, so that, through interstate cooperation, the trend toward the erection of trade barriers has been definitely checked. Generally speaking, there has been a stoppage of new trade barrier laws and in many instances, discriminatory laws have been repealed. To my mind, it has been clearly demonstrated that the States can handle the trade barrier problem more effectively through the process of negotiation and cooperation in each particular instance, than it can be dealt with through remote and necessarily generalized federal action.

In the course of negotiations with the Commonwealth of Pennsylvania on various alleged trade barriers, it was called to the attention of our New York Commission that a bus company incorporated in Delaware but registering its buses and doing business in Pennsylvania was not granted full license fee reciprocity under the New York laws. Upon the representations of the Pennsylvania Commission on Interstate Cooperation, our New York Commission succeeded in amending the law to meet this situation, thereby relieving the bus company of the burdensome extra fees.

Again, in the field of motor vehicles, we have another instance of the progress being made by the States through the movement for interstate cooperation. It is extremely notable that in the recent Interstate Commerce Commission Report to Congress recommending federal legislation relative to weights and dimensions of motor trucks and buses, the Interstate Commerce Commission, itself, was *compelled to admit* that in recent years the States have made progress toward eliminating the alleged burdensome restrictions.

New Cooperative Machinery

I am aware—as you also are—that the I. C. C. then went on to say that state progress is too slow, but I believe consideration should be given to the fact that the machinery for interstate cooperation, which has been largely responsible for state progress in this field, has only been developed in recent years and is only now achieving momentum as a firmly established method for joint state action. It might very well be that in these circumstances, the progress of the States will be speeded up in the immediate future. It would certainly seem desirable to work for such an objective.

I frankly admit that the field of motor vehicle dimension regulation is one of the most difficult problems being handled by our cooperation commissions. However, in view of the progress that has been made in other fields during the last few years, it would seem to have been demonstrated

(*Continued on page 281*)

Cooperation Wins Conservation Battle

Governors of Seven States Sign Interstate Compact to Provide Protection for Atlantic Marine Fisheries

LAST MONTH, on October 10, Governor J. Howard McGrath signed the Atlantic States Marine Fisheries Compact, making Rhode Island the seventh State to become a party to this interstate agreement. Between September 11 and 30, the Compact was signed by Governors Robert O. Blood of New Hampshire, Herbert R. O'Conor of Maryland, Walter W. Bacon of Delaware, Leverett Saltonstall of Massachusetts, Charles Edison of New Jersey, and Herbert H. Lehman of New York, in the order named. The legislatures of all seven of the States had approved the agreement earlier in the year.

GOVERNOR MCGRATH SIGNS COMPACT FOR RHODE ISLAND
Left to Right — Standing: Joseph Pezullo, W. H. Briggs, H. N. Gibbs, A. P. McCoy, C. J. Fish, J. J. Orr, J. F. Burns, J. J. Brady, H. I. Huey, C. T. Algren, S. A. Clifford, E. C. Southwick. *Seated:* Armand Coty, G. L. Crooker, Governor McGrath, W. D. Heydecker.

Under the provisions of the Compact and the Congressional resolution consenting to its negotiation, all fourteen of the Atlantic coastal States may be parties to the agreement. The Compact provides for the creation of the Atlantic States Marine Fisheries Commission, to be composed of three representatives of each signatory State: (1) The executive officer of the agency charged with conservation of marine fisheries, (2) a member of the legislature designated by the State's Commission on Interstate Cooperation, and (3) a citizen having special knowledge of, and interest in, the marine fisheries problem.

GOVERNOR LEHMAN SIGNS COMPACT FOR NEW YORK
Left to Right: J. Victor Skiff, Wayne D. Heydecker, Lithgow Osborne, Elisha T. Barrett, Oswald D. Heck, Governor Lehman, Alfred Tucker, Harold C. Ostertag.

The Commission will operate as an advisory, rather than an executive agency. It is given power to make inquiries concerning marine fisheries and to make recommendations to States regarding legis-

GOVERNOR EDISON SIGNS COMPACT FOR NEW JERSEY
Left to Right: George Warren, Joseph C. Paul (receiving pen from Governor), Robert E. Kiernan, Wayne D. Heydecker, Harry Armstrong, Marvin A. Spaulding, Dr. Charles Hunter, Edgar Williamson, Jr., Governor Edison

lation and regulation needed in order to develop uniform controls and thus to prevent the depletion of fisheries resources. The Compact designates the Fish and Wildlife Service of the U. S. Department of the Interior as the primary research agency of the Commission and provides for the formation of an Advisory Committee to represent commercial fishermen and salt-water anglers. The agreement also provides that signatory States, until some other base may be agreed upon, will appropriate funds to the Commission in proportion to the market value of the products of their respective fisheries, exclusive of cod and haddock.

The ratification of the Atlantic States Marine Fisheries Compact is of special significance not only as one of the most important steps forward in the conservation field for many years, but also as a practical demonstration of the effectiveness of the machinery for interstate negotiation and cooperation which the Council of State Governments has developed through the Commissions on Interstate Cooperation. Its operation will be watched with interest because of the economic aspects of the problems with which it is to deal.

For many years, conservation officials and fishermen of the Atlantic Coast States had watched the annual catch of many varieties of important food fish dwindle. An effective conservation program required more stringent control over the already depressed fishing industry, and effective control in one State which might put its fishermen at a disadvantage or even out of business, might conceivably, increase the annual catch in a neighboring State, but could do little to solve the fisheries problem. Even if individual State control had been politically or economically feasible—which it was not—it could have had but little effect on the conservation of fish which migrate up and down the coast and thus in and out of jurisdictions where they would be protected by conservation laws of varying effectiveness.

The United States Bureau of Fisheries had issued solemn warnings that continued over-fishing on the Atlantic Coast would exhaust the supply of many of the most valuable species. State officials recognized the problem; commercial fishermen had long known that their new, efficient

GOVERNOR O'CONOR SIGNS COMPACT FOR MARYLAND
At Table: Thomas E. Jones, Elmer M. Jackson, Governor O'Conor, Albert W. Woodfield, Edwin Warfield, Jr., Wayne D. Heydecker

fishing gear failed to bring up a catch equal to that of a few years ago, when the old type tackle was used. The Federal Government was without jurisdiction over the problem, and the States could not cope with it individually.

A little over four years ago, the conservation of the Atlantic marine fisheries was first formally discussed as an *interstate* problem at the First Interstate Conservation Conference. This meeting was called by the New York Joint Legislative Committee on Interstate Cooperation, together with the Council of State Governments, and was attended by official representatives of five States and the Federal Government. The Conference agreed that the maintenance of the Atlantic fisheries at the level of the most abundant yield, required the cooperation of the Atlantic seaboard States, and that such cooperation could best be assured through an interstate compact.

Elements of an Effective Program

At a similar meeting held the following year in New York, under the same auspices, this plan was outlined to official delegates from eleven Atlantic States and the Federal Government. Problems of the marine fisheries were thoroughly discussed and the situation in the States represented was appraised by state and federal conservation officials. Mr. Elmer F. Higgins, at that time Chief of the Division of Scientific Inquiry of the United States Bureau of Fisheries, proposed three principles to guide the development of a marine fisheries conservation program:

1) Effective regulation of the intensity of fishing so as to permit taking only the annual production of the species.
2) Devices of management should apply throughout the entire range of the commercial fishery of any species.
3) Conservation laws should include economic and social considerations designed to protect, stabilize and promote the fishing industry and to safeguard the interests of the public.

The Conference adopted a definite plan of action, prepared by Mr. Frederick L. Zimmermann, Special Research Consultant of the New York Joint Legislative Committee on Interstate Cooperation, to guide its committees in drawing up and securing adoption of an interstate agreement concerning the marine fisheries problem.

The Third and Fourth Eastern States Conservation Conferences were held in Boston in January, 1940 and January, 1941, respectively, under the sponsorship of the Massachusetts Commission on Interstate Cooperation and the Council of State Governments. At the 1940 meeting, the Drafting Committee presented preliminary drafts of a resolution giving Congressional consent to the Atlantic States for entering into the proposed compact; a proposed federal law which would prohibit the shipment in interstate commerce of fish or fish products taken in violation of state conservation laws; and the provisions of the fisheries Compact. After careful study, the delegates indicated their agreement with the general principles of the Compact and referred it back to the Drafting Committee for reconsideration in the light of the discussion and suggestions of the Conference. The Compact was reviewed and put in final form which was later approved for submission to the state legislations, by the officials of the Cooperation Commissions of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware and Maryland at their meeting in Boston last January. At this time it was also decided to refer the question of federal legislation to prohibit interstate commerce in fish, caught in violation of state conservation laws, to the Commission created under terms of the Compact.

Compact Introduced at 1941 Sessions

The Compact, together with the necessary enabling legislation, was presented by the various Commissions on Interstate Cooperation for the first time to the legislatures of the Atlantic States, which had sessions this year. It is highly significant that the Compact was adopted by the seven States previously named and that there was no adverse action in the legislatures of any of the other States where the matter came to a vote. One of the remaining States was not in session; in another the deadline for introduction of new bills had passed before the Compact was ready for submission. In two States, local factors resulted in the postponement of consideration. In South Carolina the compact passed the Senate but was overlooked in the confusion of the last days of the session in the House. Only in Connecticut was there any opposition and that apparently resulted from a misunderstanding. In spite of the strong support of the Connecticut Commission on Intergovernmental Cooperation, the House committee declined to report the Compact favorably, preferring to await the results of the

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The Midwest Dairy Agreement

Officials of Midwestern States Enter Administrative Agreement to Encourage Higher Standards in the Dairy Industry

THE STORY of the negotiation and signing of the Midwest Dairy Agreement is a success story with a moral. The theme of the story is the effective way that State officials can and do work together for a common objective when the organization and facilities for cooperative planning and action are available.

The story begins some two years ago when the Indiana Commission on Interstate Cooperation discovered that state and municipal rules and regulations in some sections of the East excluded milk and dairy products of midwestern States. The Indiana Commission enlisted the support of the Interstate Cooperation Commissions of other midwestern States and vigorously opposed these trade barriers against the dairy products of the farms of the Middle West.

Here the story has an unusual twist and differs from the accounts of other campaigns against discriminatory trade barriers. The Cooperation Commissions of the Midwest went further: They determined that the farms of their States would produce milk and dairy products of such high quality and under such scrupulously correct conditions, that the most exacting standards would be met. Areas barring such products would then find it difficult to rely on special sanitary or health regulations to disguise the economic character of trade discriminations.

The Midwest Dairy Agreement is the result of efforts of these States to improve and make uniform the standards applied to the dairy industry in the Middle West. In addition to setting their houses in order in this respect, the signatory States have also agreed to provisions which will eliminate any existing dairy trade barriers among them and prevent such developments in the future. Herein lies the moral of the story: *These States are requiring of themselves what they ask of other States.* This moral might well serve as the guiding principle for all interstate negotiations.

This story, however, would be incomplete without some mention of the cooperative machinery through which the midwestern States were able to arrive at this agreement. Without the good offices of the Commissions on Interstate Cooperation of the States and of their central agency, the Council of State Governments, it is doubtful if the dairy agreement would have been drafted and approved so promptly. The Commissions on Interstate Cooperation are the component parts of the Council of State Governments and official agencies of the state governments. They provide the machinery through which interstate problems of all kinds have been solved by the cooperative action of the States themselves. The Midwest Dairy Agreement is one of the recent examples of the successful use of this machinery.

The authorized officials of Indiana, Iowa, Kentucky, Minnesota, Tennessee, and Wisconsin have formally signed the agreement, and authorities in Illinois, Michigan and Ohio have accepted the principles of the agreement and indicated their intention of working in close cooperation with the other States. Representatives of Missouri attended the conferences at which the agreement was drafted, and officials of that State are expected to give approval in the near future.

The agreement provides that each signatory State will accept the standards developed by the Committee of Dairy Technicians of the Midwestern States as approved at the midwest regional meeting on dairy problems in Chicago on June 6, 1941. These standards are to be used as the basis of rating milk supplies for manufacturing purposes and a minimum of 65 per cent compliance, based on the weights assigned by the Technicians Committee to the various items included in the standards, is to be considered satisfactory. The standards relate specifically to tuberculin tests for herds, lighting and ventilation of dairy barns, the sanitary condition of dairy equipment and milk receiving plants, the pasteurization and bacteriological tests of milk, and similar safeguards to public health. The States have further agreed, insofar as possible, to furnish information concerning ratings to proper officials of other States upon request.

Section two of the agreement provides that

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A Solution of the Double Domicile Problem

Proposed Reciprocal Statute Provides Machinery for Arbitration of Conflicting State Claims for Death Taxes

By Mortimer M. Kassell

Deputy Commissioner and Counsel, New York Department of Taxation and Finance

The problem of multiple death taxation by the States has long been a vexing one to persons of wealth, their executors and heirs, tax officials, courts, and all others connected with "death and taxes." In the 1920's, with the widespread holding of stock in nationwide corporate businesses, came multiple death taxation of intangibles. This resulted because several States imposed death taxes on a decedent's intangibles. Thus, the State where stock certificates or other intangibles were physically located imposed a tax regardless of the domicile of the owner, and the State of domicile also imposed a tax regardless of the location of the intangibles. In addition, in the case of corporate stock, the State of incorporation also taxed. Patently, the burden and expense

A MODEL RECIPROCAL STATUTE

To Provide for the Settlement of Disputes among States with Respect to Domiciliary Death Taxes

Section 1. Definitions. As used in this act:

(a) The term "executor" means any executor of the will or administrator of the estate of a decedent, except an ancillary administrator;

(b) The term "taxing official" means the _____ (insert title of the state official charged with the duty of administering your death tax laws) in this State and the officer or body in any other reciprocal State designated in the statute of such State substantially similar to this act;

(c) The term "death tax" means any tax levied by a State on account of the transfer of or shifting of economic benefits in property at death, or in contemplation thereof, or intended to take effect in possession or enjoyment at or after death, whether denominated an "inheritance tax," "transfer tax," "succession tax," "estate tax," "death duty," "death dues," or otherwise;

(d) The term "interested person" means any person who may be entitled to receive or who has received any property or interest which may be required to be considered in computing the death tax of any State involved;

(e) The term "State" means any State, territory, or possession of the United States, and the District of Columbia.

§ 2. Election. Where this State and one or more other States each claims that it was the domicile of a decedent at the time of his death, and no judicial determination of domicile for death tax purposes has been made in any of such States, any executor, or the taxing official of any such State, may elect to invoke the provisions of this act. Such election shall be evidenced by the sending of a notice by registered mail, receipt requested, to the taxing officials of each such State and to each executor, ancillary administrator and interested person. Any executor may reject such election by sending a notice by registered mail, receipt requested, to the taxing officials involved and to all other executors within forty days after the receipt of such notice of election. If such election be rejected, no further proceedings shall be had under this act. If such election be not rejected, the dispute as to the death taxes shall be determined solely as hereinafter provided, and any proceedings that may have been theretofore taken in this State to determine or assess such death taxes in the courts or otherwise shall be annulled and of no effect.

§ 3. Compromise. In any case in which an election is made as provided in section two hereof and not rejected, the _____ (insert title of the state official charged with the duty of administering your death tax laws) may enter into a written agreement with the other taxing officials involved and with the executors, to accept a certain sum in full payment of any death tax, together with interest and penalties, that may be due this State, provided that said agreement also fixes the amount to be paid the other State or States. Such agreement shall not be effective unless approved by the _____ (insert title of the state official, if any, whose approval is to be required). If an agreement cannot be reached and the arbitration proceeding specified in section four is

of multiple taxes and tax proceedings were economically undesirable and injurious to relationships between various States. Realizing the desirability of a rule vesting exclusive power to tax in one jurisdiction, the National Tax Association urged the adoption of a reciprocal statute under which a State relinquished its power to tax the intangibles of a nonresident decedent in favor of his domicile. By 1930, almost forty States had

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commenced, and thereafter an agreement is arrived at, a written agreement may be entered into at any time before such proceeding is concluded, notwithstanding the commencement of such proceeding. Upon the filing of such agreement or duplicate thereof with the authority which would have jurisdiction to assess the death tax of this State if the decedent died domiciled in this State, an assessment shall be made as therein provided and such assessment, except as hereinafter provided, shall finally and conclusively fix and determine the amount of death tax due this State. In the event the aggregate amount payable under such agreement to the States involved is less than the maximum credit allowable to the estate against the United States estate tax imposed with respect thereto, the executor forthwith shall also pay to the ———————— (insert title of state official charged with the duty of administering your death tax laws) so much of the difference between such aggregate amount and the amount of such credit, as the amount payable to the ———————— (insert title of state official charged with the duty of administering your death tax laws) under the agreement bears to such aggregate amount.

§ 4. Board of arbitration. If in any such case it shall appear that an agreement cannot be reached as provided in the foregoing section, or if one year shall have elapsed from the date of the election, the domicile of the decedent at the time of his death solely for death tax purposes shall be determined as follows:

(a) Where only this State and one other State are involved, the ———————— (insert title of the state official charged with the duty of administering your death tax laws), with the approval of the ———————— (insert title of the state official, if any, whose approval is to be required), and the taxing official of such other State shall each appoint a member of a board of arbitration, and the members so appointed shall select the third member of the board. If this State and more than one other State are involved, the taxing officials thereof shall agree upon the authorities charged with the duty of administering death tax laws in three States not involved, each of which shall appoint a member of the board. The members of the board shall elect a chairman.

(b) Such board shall hold hearings at such places as are deemed necessary, upon reasonable notice to the executors, ancillary administrators, all interested persons, and the taxing officials of the States involved, all of whom shall be entitled to be heard.

(c) Such board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of books, papers and documents and issue commissions to take testimony. Subpoenas may be issued by any member of the board. Failure to obey a subpoena may be punished by a judge or justice of any court of record in the same manner as if the subpoena had been issued by such judge or justice or by the court in which such judge or justice functions.

(d) Such board shall apply, whenever practicable, the rules of evidence which prevail in federal courts under the federal rules of civil procedure at the time of the hearing.

(e) Such board shall, by majority vote, determine the domicile of the decedent at the time of his death. Such determination shall be final and conclusive, and shall bind this State and all of its judicial and administrative officials on all questions concerning the domicile of the decedent for death tax purposes.

(f) The reasonable compensation and expenses of the members of the board and employees thereof shall be agreed upon among such members, the taxing officials of the States involved, and the executors. In the event an agreement cannot be reached, such compensation and expenses shall be determined by such taxing officials, and if they cannot agree, by the appropriate probate court of the State determined to be the domicile. Such amount shall be borne by the estate and shall be deemed an administration expense.

(g) The determination of such board and the record of its proceeding shall be filed with the authority having jurisdiction to assess the death tax in the State determined to be the domicile of the decedent and with the authorities which would have had jurisdiction to assess the death tax in each of the other States involved if the decedent had been found to be domiciled therein.

§ 5. In any case where it is determined by the board of arbitration that decedent died domiciled in this State, penalties and interest for nonpayment of the tax, between the date of the election and the final determination of the board shall not exceed four per centum per annum.

§ 6. The provisions of this act shall apply only to cases in which each of the States involved has a law substantially similar to this act.

§ 7. If the provisions of this act conflict with any other law of this State, this act shall control.

§ 8. This act shall take effect immediately, and shall apply to the settlement of disputes among States with respect to death taxes without regard to whether the decedent died before or after the enactment of this act.

Microphotography in Record-Keeping

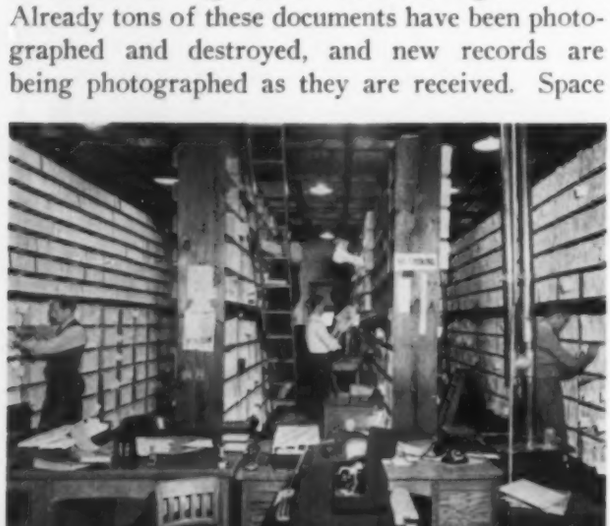
Michigan Motor Vehicle Division Finds Miniature Film of Official Documents Simplifies Filing Problems, Reduces Costs

By Harry F. Kelly
Secretary of State of Michigan

The streamlining of the activities of the Motor Vehicle Division of the Michigan Department of State has been hailed as the most progressive step since the establishment of the Division. As a result of this reorganization, Michigan officials believe that the registration and filing system of the Motor Vehicle Division is one of the most modern now used in any State.

The most important aspect of the transformation and the one which is basic to other changes is the use of microphotography for recording and preserving automobile title and registration records. Under the new system records required by the Division are photographed in miniature, and, when reference is made to them, a tiny roll of film is placed in a projecting machine and "blown up" for easy inspection.

The Michigan law requires that transferred titles be kept on file for six years by the Motor Vehicle Division. As a result of this requirement, millions of such records had accumulated in the files of the Division when the new plan was put into operation. In 1940 alone, Michigan had more than 1,500,000 automobile registrations. Already tons of these documents have been photographed and destroyed, and new records are being photographed as they are received. Space formerly occupied by cumbersome, space-consuming wooden files (*see cut below*) is now used to house two other divisions of the Department of State which formerly occupied rented quarters in downtown Lansing. On this item alone approximately $6,000 a year is being saved.



Before—*acres of records . . .*

After—. . . *filed in inches of space*

The development of the new system was an instance of necessity being the mother of invention. The top floor of the State Capitol building, where the offices and filing rooms of the Motor Vehicle Division have been located for many years, had become so over-crowded as to constitute a serious fire hazard. The congestion also increased the danger of misfiling and reduced the efficiency of our services to the public.

The micro-filming process has made the solution of these problems possible. The films of records of the Division are filed in a very small fraction of the space formerly required, and the files are now conveniently located for reference purposes. The fire hazard has been eliminated; service has been improved, despite the fact that there are now fewer employees; and the offices of the Division have taken on the appearance of modern efficiency (*see cut above*). A recent visitor to the new registration office aptly described it as being "acres of records, filed in inches of space."

State Law Officials Meet in Indiana

Attorneys-General and Commissioners on Uniform State Laws Hold Meetings in Connection with Bar Association

THE NATIONAL ASSOCIATION of Attorneys-General and the National Conference of Commissioners on Uniform State Laws held their annual meetings in Indianapolis during the last part of September, in conjunction with the convention of the American Bar Association. Both organizations are associated with the Council of State Governments in the attempt to develop interstate cooperation, to increase the uniformity of certain types of state laws, and to assist the States to make their maximum contribution to the defense effort.

ATTORNEY-GENERAL
EARL WARREN
Retiring President

Theme of the thirty-fifth annual meeting of the National Association of Attorneys-General, in Indianapolis September 29 and 30, was the consideration of problems facing law enforcement officials throughout the country as a result of the national defense effort. Francis Biddle, recently appointed Attorney-General of the United States, in speaking on "Law Enforcement and Our Civilian Defense Program," praised the effectiveness of the work of the Federal-State Conference on Law Enforcement Problems of National Defense, the National Association of Attorneys-General, the Governors' Conference, and the Council of State Governments. He emphasized the profound difference between the democratic and totalitarian views of law and civilization, and suggested that lawyers are particularly well qualified to sustain the democratic view since their task is to protect the interests of "the average man." In referring again to the Federal-State Conference on Law Enforcement Problems of National Defense, he said: "The Conference also resulted in . . . a great change in our whole attitude toward what I might call volunteer vigilante groups. You must, all of you, remember when vigorous young American associations were continually springing up . . . The coolness of the Governors and Attorneys-General did much to put into the country a sane and cool approach to the defense program and to educate the country not to feel that every alien one saw was a spy . . ."

Attorney-General Earl Warren of California, President of the National Association of Attorneys-General, and Governor Harold E. Stassen of Minnesota, Chairman of the Governors' Conference, both placed special emphasis upon the new and unusual duties which fall upon state officials as the result of the defense program. President Warren declared that: "If no other benefit should accrue from this organization than to afford a better opportunity for an exchange of . . . ideas, it would be essentially worth while because the greatest responsibility of every State Attorney-General in this country is to see that his State passes unscathed through the perilous times ahead of us . . . It would be an empty victory indeed if we should defeat the totalitarian enemy but only at the expense of losing some substantial part of local self-government . . . We should not offer blind resistance to the assumption of power by the Federal Government at a time like this. It has a tremendous responsibility and is charged with the duty of doing in these turbulent days whatever is essential for the general welfare, those things which cannot be done or are not being done by state and local government . . . It therefore devolves upon us, as principal officers of the States to see that state and local government is effective . . . There is no such small group in America that can do more to make state and

ATTORNEY-GENERAL
ABRAM P. STAPLES
New President

local government work than the National Association of Attorneys-General."

"From that day in 1789 when President George Washington appointed Edmund Randolph the first Attorney-General of the United States," said Governor Stassen, "the Attorneys-General of the United States and of the States of the Union have played an extremely important part in maintaining our government as one of laws and not of men.

"The Attorneys-General of the States of the Union can be of inestimable service as they alertly and intelligently anticipate problems of national defense and of the States' cooperation with the Federal Government. They can study through and advise the means by which unusual requirements for defense can be met within the framework of the State Constitutions and state laws, giving positive, constructive advice, in addition to the prevention of illegal action and safeguarding of integrity."

On the first day's session, Attorneys-General Pallotti of Connecticut, Ireland of Colorado, Rushton of Michigan, and Watson of Florida, took part in a symposium on "The Supreme Court Re-interprets the Constitution." It was pointed out by all of the speakers that new interpretations of the Constitution which had been made by the Supreme Court within the past few years were undoubtedly in accord with the will of the majority of the people of the nation. The Attorneys-General questioned the correctness of some of the decisions which appeared to enlarge further the powers of the Federal Government at the expense of the States and the localities. Each of the speakers urged the continued recognition of the traditional position of the States in our constitutional system, as the reservoir of sovereign power from which specific grants were made to the Federal Government at the time of the drafting of the Constitution, and subsequently through Constitutional amendments.

Colonel E. R. Beckwith, Judge Advocate General of the New York State Guard, was invited to tell the organization of the work being done in New York State to formulate and publish a compendium of military law from the viewpoint of the States. It is planned that this manual will give the officers of the state military force a precise description of the nature and extent of their powers.

Colonel Beckwith asked the Attorneys-General if they would be willing to criticize the manuscript upon its completion in order that the text might be as representative of legal opinion of all of the States on as many of the undetermined questions of law contained in it as possible. Members of the Association agreed to study the work before its publication as requested by Colonel Beckwith.

Attorney-General Abram P. Staples of Virginia, newly elected President of the National Association, discussed the effect of the New River Case and pointed out that this decision has resulted in the broadening of the former judicial concept of what constitutes navigable waters in this country. The decision would seem to bring many important streams and lakes within federal control, but leaves open the important question as to whether or not the several States own property rights in the water power of such streams.

Members of the Executive Committee elected for the coming year are:

Abram P. Staples of Virginia, President
Thomas J. Herbert of Ohio, Vice-President
Francis A. Pallotti of Connecticut
John M. Rankin of Iowa
Greek L. Rice of Mississippi

Many Uniform Laws Enacted

Encouraging reports of increased adoption of uniform acts drafted by the National Conference of Commissioners on Uniform State Laws and plans for further consideration of acts by the state legislatures marked the fifty-first annual meeting of the Conference in Indianapolis, September 21-27, 1941. Judge Fred T. Hansen, Chairman of the Conference's Standing Committee on State Legislation, reported that no less than 84 uniform acts were adopted in the regular state legislative sessions of 1941. The number of adoptions this year was more than double the total secured during the 1939 sessions, when 36 uniform acts were adopted. During 1941, 208 acts were introduced, in comparison with 122 two years ago.

The legislative committee recommended that in each State there should be a continuous study of the uniform acts not yet enacted, in order that the intent and purport of each might be presented to the state legislature in a clear and concise form. In this way the legislators could be informed concerning the precise manner in which the statutes of the State would be altered by each of the proposed uniform acts. The committee suggested

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Western States Study Defense Situation

State Officials of Pacific Coast and Rocky Mountains Take Part in Regional Defense Conferences

LAST MONTH, Governors, representatives of State Defense Councils, Commissions on Interstate Cooperation, Leagues of Municipalities, and State Planning Boards from seven of the far western States met in the fourth of a series of regional conferences on "The States and National Defense" sponsored by the Council of State Governments. The meeting, which took place in San Francisco on October 9th and 10th, discussed problems of the States having to do with production, civilian defense, health, welfare and related activities. The fifth of the series of such conferences, for representatives from the Rocky Mountain States, is being held in Denver as STATE GOVERNMENT goes to press.

In the first session of the meeting in San Francisco at which Governor Charles A. Sprague of Oregon presided, the delegates centered their discussion upon problems having to do with procurement, production, priorities, labor and civilian supply. Lieutenant Colonel Ray M. Hare of the Army and Lieutenant Commander E. P. A. Simpson of the Navy explained that both of the nation's primary defense arms were making every attempt to seek the widest possible distribution of contracts. They emphasized that the primary consideration must be the placing of orders in the hands of firms which are financially stable and have management with the ability to see that the job is done. However, while the primary consideration is the ability to do the job within a specified time, the Army and Navy have at all times urged the extension of subcontracting to the greatest possible extent.

Following the discussion, Mr. William Hale, Deputy Coordinator of the Division of Contract Distribution of OPM in San Francisco, described the work which is being done in the far western States in spreading the work among smaller businesses. Mr. R. C. Force, the Coordinator, described for the delegates the work being done by the new Division of Contract Distribution and explained some of the cooperative methods being adopted by smaller businesses. Some have determined upon a policy of pooling the resources of several smaller firms within a single area, thus enabling a group of smaller industries to take a contract which otherwise would be too large for any of them to undertake individually.

Mr. J. C. Bolinger, Executive Secretary of the Washington State Defense Council, led the discussion of specific instances of these problems. It was pointed out repeatedly that the basic problem of smaller businesses is that of being crowded out because of inability to get necessary materials. This, it was indicated, is one of the most important problems confronting each of the State Defense Councils.

The afternoon session on Thursday, October 9, was devoted to civilian defense activities in the Far West. Among the many problems considered at this meeting, an especially difficult one was the question of the responsibility which should be borne by federal, state, and local governments, as well as private industry, in the protection of defense industries and public utilities from sabotage or enemy attack. Since California has a larger number of defense contracts than any other State in the Union, and Oregon and Washington are also engaged in large production programs, this problem has already arisen in several instances. Members of the Defense Councils in these States described the measures already taken by private industries engaged in defense production, and the oil industry in particular, to protect their plants against sabotage.

As a result of the discussion, the Conference adopted a resolution directed through the Regional Director of the Ninth Civilian Defense Area to the Office of Civilian Defense, requesting the Federal Government to outline its policy in respect to the division of responsibility as between these groups for the protection of industries and vital utilities.

The second day's session of the Conference, which was addressed by Governor Culbert L. Olson of California, was devoted to a discussion of health, welfare and related activities in relation to defense. Mr. Pearce Davies, Assistant Re-

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THE STATES IN NATIONAL DEFENSE

Defense in Florida

WHEN A hurricane swept over Florida last month, local agencies in Tallahassee were ready and waiting to meet the emergency. For some time, as a part of the State Defense Council's civilian defense program, police, Red Cross and citizen groups had been learning what to do in case of an enemy attack on their city. The "air raid" which came was not of the expected type, but civilian defense groups went into action without delay. Plans for the evacuation of a neighboring community, in the direct path of the storm, were made, and problems resulting from fallen timber and masonry, severed communications, etc., were dealt with more efficiently than ever before. Citizens of Tallahassee feel confident that future disasters will not catch them unprepared, judging from the manner in which this one was handled.

THE FLORIDA State Council of Defense has recently issued a comprehensive and detailed volume dealing with home gardens and food conservation in relation to the defense nutrition program. Copies of this publication have been sent to local defense councils throughout the State.

THE DIVISION of Labor and Personnel reports that it is engaged in indexing and classifying the civilian volunteers in Florida, and that the total is expected to exceed a million.

Civilian Defense Week

PRESIDENT ROOSEVELT recently proclaimed November 11-16 as Civilian Defense Week, wherein all celebrations will be planned around a main theme: "The only answer to total war is total defense." The President's purpose in setting aside a special period for the consideration of civilian defense problems was three-fold:
(1) To stimulate the people to an awareness of the need for civilian defense and the many specific ways in which people can participate.
(2) To inform the people as to how local civilian defense groups are being organized, and how civilians can enroll and serve.
(3) To stimulate the establishment of volunteer offices so that active civilian protection and community service programs can proceed promptly.

Women in Defense

LAST MONTH Governor Herbert H. Lehman of New York addressed the Institute for Women Members of Local Defense Councils which met in Albany. He stressed the important role which women must play in meeting the defense emergency and congratulated the Institute on planning a working program for the meeting. "With the menace to our security and freedom increasing daily," he said, "all individuals in the State and in local communities must be stimulated to cooperate toward this all-out national effort. In planning for it, we must include all groups in community planning and in free community service. . . . Division between our people must not be allowed to exist if democracy is to be preserved."

Sales Tax Exemption

ACCORDING TO information from the National Association of State Auditors, Comptrollers and Treasurers, sales which are for the exclusive use of a State or a political subdivision are exempt from most of the federal excise taxes on sales imposed by the 1941 Revenue Act. Such exemption applies to sales which ultimately reach a state government for its exclusive use, regardless of the number of intermediate sales involved.

License Plate Conservation

THE OFFICE of Price Administration and Civilian Supply has requested state motor vehicle officials to require motorists to surrender their 1941 license plates when they receive their 1942 tags. This move is intended to conserve needed metal in face of a shortage which threatens to cut off the entire supply of sheet steel for license tags in 1943. It is estimated on the basis of 1940 motor vehicle registrations, that more than 10,000 tons of steel would be saved if this year's licenses were surrendered or used again.

The Connecticut plan of issuing five-year license plates is one method which not only conserves steel but saves the State a considerable sum of money on processing costs. According to reports from Secretary of State Harry Kelly, Michigan's 1942 plates will be made to last two years; change-over to 1943 will be made by bolting a small steel strip with the numerals "43" over the original figures.

Defense Education

MORE THAN half of the forty-three legislatures in session this year made provisions for turning the educational resources of their States to the needs of national defense. Thirty-eight laws in all were enacted, authorizing everything from the establishment of defense training schools in high-school and colleges, to the building of new schools for children of defense workers. Among the more important provisions were those in

Maine, Nebraska, South Carolina, Vermont, Idaho, and Massachusetts, designating special schools for training in defense work, and those in Oregon, Washington, Georgia, New York, Colorado, Connecticut, Ohio, California, Texas, Missouri, Pennsylvania and New Jersey, placing vocational education for defense under local or State sponsorship. Three States—Washington, Nebraska, and Texas—enacted laws providing for the education of children of service men and defense workers. Iowa and Utah, respectively, passed laws consolidating school districts and exempting certain students in defense courses from registration and tuition fees.

Defense in Connecticut

COLONEL SAMUEL H. Fisher, Connecticut Defense Administrator, recently announced the appointment of Major John T. Curtis as Commandant of the Connecticut Civilian Defense Corps. Major Curtis was appointed with the approval of Governor Robert A. Hurley and will serve as a volunteer without compensation. He is a graduate of West Point and formerly was an officer in the regular army.

A STATE-WIDE "tuning-up" program among the 169 local defense councils, to make assistance available to those now lagging in organization and development work, has been initiated by the Connecticut State Defense Council. The work of all councils is now being surveyed by a staff of experts and help is being given, where needed, to bring activities up to par. Special attention is being directed to the personnel of the councils and formation of necessary committees. It has been specified that an active and efficient council should include a chairman, a secretary, a group of at least eight or twelve prominent citizens, both men and women, and a chief air-raid warden. Committees of the council should include those on fire and police affairs, women's activities, plant protection (in towns with defense plants), medicine and health, transportation, finance, agriculture, publicity, education, housing, registration, evacuation, and civilian defense units. In smaller towns the survey staff will recommend the consolidation of certain committees, and the councils will be urged to concentrate on local problems of particular importance.

Local Defense Borrowing

LEGISLATION passed at the recent session of the Massachusetts General Court authorized cities and towns during the national emergency to appropriate money for financing activities essential to civilian defense. Necessary funds may be raised by taxation or borrowing, but, if the latter method is used, the bonds or notes must be marked as issued "under the Defense Loan Act of 1941" and must mature not later than five years after the date of issue. The Massachusetts law permits the financial participation of all local communities regardless of population. A similar law, passed in Utah some months ago, restricts financial participation to cities of over 50,000 in size. Only Salt Lake City falls into this classification.

Emergency Water Supply

A NEW DEVELOPMENT in the realm of state defense activity took place recently in New York, with the establishment by Governor Lehman of a mutual aid plan for water supply in case of emergency. The plan follows the recommendations developed by a special committee of water works experts, which has made a detailed study during the past few months. The operation of the plan will insure the immediately availability to any point in the State of repair materials and services in case portions of a water system are injured, and to provide auxiliary water sources in cases of total destruction. The program provides for the division of the State into twenty-three water service zones. Nineteen of these zones will be co-extensive with the nineteen state health districts; the four others comprise New York City, Nassau, Suffolk and West Chester counties. Earl Davendorf, Assistant Director of the State Health Department's Division of Sanitation has been appointed State Water Supply Coordinator and a coordinator and assistant have been designated for each water service zone.

Utah Registration Cards

INFORMATION received from the Utah State Council of Defense indicates that 30,000 persons, nearly ten times the original estimate, registered for civilian defense service there last September (see "The States in National Defense, STATE GOVERNMENT, October, 1941). This response was attributed largely to the distribution of cards to registrants, making them a part of a "club of patriots" dedicated to the cause of defending their State. The effectiveness of the plan was demonstrated through a survey, suggested by Joseph H. McKay state coordinator, and publicized as part of the campaign by Stephen J. Malony, state publicity director, which showed that recipients displayed their cards as proudly as they did emblems of membership in lodge organizations, etc.

Defense Training Schools

STATE Defense Councils in three States—Connecticut, Rhode Island and New Hampshire—are sponsoring special courses of study in various phases of civilian protection. In Connecticut and Rhode Island, the three-day schools for air-raid wardens will be under the direction of former Governor of Maine, Lewis O. Barrows, an instructor at the Massachusetts Institute of Technology. In Connecticut the school will be held at Trinity College, Hartford, and in Rhode Island at Brown University. In New Hampshire, the civilian defense training school for women is being held at Gilford, under the direction of Mrs. Sara Otis, head of the women's division of the State Defense Council.

State-Local Fiscal Relationships

(*Continued from page 260*)

One of the main problems confronting students of government is to bring the political or governmental system into harmonious relationship with the economic system under which men live. It has been freely assumed that there has been no connection between the economic and the political system. This is a cardinal error. As a country, we have been a national unit so far as our economy is concerned. Trade and commerce have been relatively free within our continental territory. Resources in one section have been freely available to all at a fair price in an open market. Regions have been devoted to what they could best produce. Individuals have similarly specialized as their talents made possible. Wants have been satisfied by the exchange of goods and services. Under this system as individuals and as a nation we have prospered. We have done the things we could do best.

The economic system was no respecter of political lines. Trade and incomes passed freely over territorial borders unless inhibited by costly and shortsighted barriers. Yet, instead of bringing the political system into harmony with the economic structure, some regions tried to forget that they were part of a single national economic unit. They tried to develop exclusive markets for their residents or endeavored to levy tributes or enrich themselves at the expense of their neighbors. Instead of attempting to deal with national economic problems by national means, jurisdictions with limited territories sought to cope with them. We have seen that single States could not cope with the problems of agriculture, nor with the regulation of railroads, nor with the migrations of live stock, nor with many other problems. Manufacturing areas have been governed by agricultural populations who did not understand the problems of industrialism. People with like problems, similar beliefs and homogeneous resources have been separated by political boundaries. Conflicting economic interests of major dimensions have gone unreconciled in many States because the political system was not adapted to their solution. Moreover, each unit and set of units has acted as though it were independent. Meanwhile, the unemployment in one area spread to other regions; the speculation in one section undermined the financial institutions in States far away; the illiteracy of itinerants lowered the cultural standards of communities where they settled; the lack of sanitation in one place spread disease to neighboring towns; the bankruptcy of some places cast doubt on the financial integrity of others; the subsidies and tax exemptions of some regions undermined the trade of regions close by. The tax policies of some States were aimed at neighbors. The revenue laws of some areas undermined the stability of governments in other regions. Political and fiscal independence were secured at an exorbitant price in the belief that the actions of one unit did not affect the welfare of other agencies in the political hierarchy. The lessons of the last decade indicate the errors implicit in this belief.

It was likewise assumed that the policies of state-local governments could be adopted without reference to economic conditions. A normal state of affairs was always assumed. It did not matter whether revenue devices were appropriate to the times; they were adopted if they produced adequate funds. Taxes tending to curtail business were frequently adopted when every effort should have been made to improve economic activity and to reduce rather than increase tax burdens. Property tax levies were often raised in the face of increasing delinquency. The cost of such practices we continue to pay.

Business Cycles and State-Local Finance

In the field of expenditures, policies have been equally inappropriate. Prior to the last decade governmental expenditures followed the course of the economic cycle. When times were good, expenditures were increased; during hard times, they were reduced. Public works were expanded when they competed with industry for goods and labor, thus enhancing costs to themselves and to private enterprises. When unemployment began to appear, governments reduced rather than increased their public expenditures. This tended to be the typical policy for governments up until the beginning of the current decade, at which time some little consideration was given to the advisability of adopting anti-cyclical fiscal measures. Nevertheless, in the state-local field, governmental expenditures continued to follow the course of the economic cycle. These units reduced their expenditures drastically during the last depression. So extensive was the liquidation that up until 1938 increased expenditures by the Federal Government on public works, for example, did little more than offset the shrinkage in such

outlays by state-local units. Under the circumstances it was difficult for the Federal Government to increase aggregate spending. During the depression economic rehabilitation would have been augmented by the continuance of state-local expenditures, if the outlays had been financed by non-deflationary devices. Now the situation is somewhat reversed. It is desirable to induce the state and local units to postpone (so far as this is possible) the making of capital improvements. Not only are goods scarce and labor more valuable on defense but competition with defense for goods and services is to be avoided lest the competition add another force to push prices upward. The postponement is also advantageous in adding to the measures available to assist in post-defense adjustments. It remains to be seen, however, whether these preachments will be sufficient to induce the state-local governments to postpone outlays in the face of the rising national income, the greater prosperity and the urge to spend which inevitably accompanies improved business conditions. Just as in the depression the policies followed by the subordinate governments made more difficult the tasks of the national government, so is it today—state-local policies may either assist or make more arduous the tasks of the Federal Government. The nation as a whole, of course, assumes the cost of this lack of fiscal coordination. In considerable measure these costs could be avoided, or at least greatly minimized.

It must be observed that it is especially difficult to apply cyclical fiscal policies to state and local finances. These governments have only limited jurisdictions in which they operate. As a result, the available taxable resources are restricted. Both the incomes of population groups and the wealth of citizens from which taxes can be paid are limited. As governments become smaller both in size and territory, these handicaps become more important and limit spending to resources currently available and at hand. Even the possibilities of expanding credit in time of need are circumscribed by limitations upon taxable resources. Moreover, these same restrictions as to territory and volume of operations handicap effective administration of tax laws. Numerous revenue measures are unsuited for state and particularly local execution. Tax measures which should apply to the economy as a whole operate without uniformity and produce undesired effects when applied to restricted areas within the economy. The smaller the territory in which they apply, the greater become the opportunities for tax shifting or tax avoidance, as is appropriate to the measures employed. On the other hand, restricted areas tend to be so adversely affected by economic conditions that the adoption of cyclical fiscal policies by them is precarious and imprudent. Single areas are too easily affected by changes in technology, by shifts in the demand for products locally produced, by the consequences of land or other speculation, by unemployment, by tax delinquency and other factors to warrant the independent adoption of cyclical financing.

Many of the difficulties arise because units tend to act as though they were independent, adopting policies without reference to the needs, requirements or action of other units. Moreover, the larger the financial power of the units the more they have tended to override and ignore the requirements of other units in the development of their own program. Even the extension of aids and the sharing of revenues have been largely restricted to objectives in which the major units had a dominant interest. The notions of independence of action and of independent financial responsibility which have prevailed have made difficult the adoption of cyclical fiscal policies by the subordinate units. It is doubtful if they should ever be able completely to adopt cyclical programs but it is certain that more could be done than has been accomplished to date. With the development of greater fiscal cooperation among governments, with the extension of sharing and the expansion of grants more in the way of cyclical financial policies could be attained. Perhaps the exigencies of the defense era may hasten these developments.

Independence vs. Interdependence

The problems of intergovernmental fiscal relationships are not wholly cyclical. In the past decade the interdependence of States came to be clearly recognized. The dependence of subordinate governments upon the superior or central units also came to be demonstrated repeatedly. State sovereignty was replaced quite often by national action and national authority. Local activities were also frequently transferred to States. A limited number of transfers in the opposite direction also took place. The problems of the time, for the most part, have been beyond the power and jurisdiction of governments with but little territorial authority. National and regional problems rather than local or state problems have

characterized the past few decades. The financial requirements imposed on many units have been in excess of the capacity of restricted tax systems and of restricted areas to produce them. The sources of credit for many units dried up, or at least were restricted by depression, all of which affected the ability of various cogs in the American political hierarchy smoothly to function. Localities looked to States for assistance; States turned to the nation for aid. In short, a maturing economy was forced to solve national and world-wide social and economic problems. This could not be done by the action of subordinate governments. The character of the problems was such as to put our political system to a test. The problems were solved, moreover, by doing little to improve the structure of the political mechanism, or the relation of the parts to the whole machine. Rather, action was achieved primarily at national expense, state-local cooperation and activity being secured—perhaps I had better say being purchased — largely by financial aids of various types. It was easier to transfer funds than to revamp the structure of government or attempt to solve the intergovernmental financial dilemmas.

The interdependence of governments so clearly seen in the past decade stands out in sharp contrast to the previously assumed independent status of governments. The units were supposed to have distinct lines of political authority. The functions were supposed to involve little overlapping, but this illusion was shortlived if it ever existed. The functions of our various governments have tended greatly to overlap; their authority has been both competitive and concurrent, but always ending at territorial boundaries. A current survey of budgets shows that all governments spend money on education, protection of persons and property, highways, recreation, sanitation, and perhaps every other function. Emphasis on particular activities differs among governments, but there is little, clear-cut segregation of functions.

It is likewise impossible to assume that the units are financially independent. To a degree, this has been true. Except where inhibited by constitutional or other legal authority, units have developed their own revenue systems without interest in the effect of their policies on other units. Seldom have the states conferred with each other as to fiscal legislation or its effects. The nation has proceeded to develop its finances without conference with or notice to the subordinate units whose revenues have been affected by national action. It kept the state-local units in the dark, save in year to year budgetary messages, as to its depression policies. Perhaps it was not sure enough of its plans to announce its policies. To a limited extent it has followed the same course with respect to defense. Unofficial advice has, of course, been offered to the state-local units but nothing has been done officially to coordinate policies nor to harmonize them. Notions of fiscal independence in a world where they apply too little are still too strong.

Competition for Tax Sources

The same conditions are reflected in state conduct. True, the Constitution gave the nation certain exclusive powers with respect to taxation, particularly with respect to the taxation of commerce between the nation and the States but, except for these few exclusions, the taxing jurisdiction of the nation is concurrent with that of the States. Certain federal taxes, however, have been so severe that the national government has really preempted these sources although they are used in lesser degree by the State. Between the States and the localities there is a large measure of independence in reliance upon different revenue sources, but the extent of use and pattern of local measures remains under the control of state governments. In some instances the regulation by States is meticulous in the extreme, the purpose, the amount and nature of the tax levies being under detailed control. On the whole, town air has not meant fiscal freedom. It has signified a wedding to property taxation supplemented by a few added sources of revenue, and the smaller the unit of government the greater has been its dependence on the property tax.

The States during the last half-century have tended to depend less on the property tax than before but wisely continue to supervise its administration, the effectiveness of which tends to wane as their stake in its revenues diminishes. Lucrative sources of revenue have been developed by the States, but as these new taxes have required state administration for effective execution the States have tended to retain for themselves the revenues collected. Unlike the revenues from property taxation, which were collected through local machinery, present state revenues are largely state collected. This is both more efficient and more economical. It has tended, however, to place increasing sums at the disposal of the State

and to leave the localities but with a single major source of funds with limited revenue productivity. This has magnified the financial difficulties of urban governments and has made the States relatively more opulent than before. Ability to finance rather than the principle of functional efficiency in the performance of services has tended to determine the allocation of activities between state and local units. Need for funds for providing services has not been as important a claim to resources as ability to collect them. Thus have the units with full treasuries tended to expand while others have tended to shrivel. This has tended to undermine the position of urban governments. Their financial requirements are large; their ability independently to secure adequate funds by proper taxes is limited.

The depression was unusually severe on the sources of municipal revenue. Property values were adversely affected by economic conditions which likewise increased delinquency as well as the demand for relief. Reduced revenues and increased demands for public assistance were almost simultaneous. The economic plight of many taxpayers, the reduced fortunes of others and the severity of property taxes operating as overhead costs on industry combined to re-enforce the demand for the deflation of local budgets. These conditions cumulating with others to create difficulties for banks and financial institutions eventually led to the demoralization of the market for short-term paper. Tax and other revenues dwindled. As economic conditions improved, these conditions, of course, tended to correct themselves, clearly indicating how closely local governments are affected by economic vicissitudes.

One lesson which should be remembered is that the welfare of governments is not independent of that of its citizens. Adversity to the governed is reflected in the fiscal operations of political units. Deficits and depressions are usually companions. Revenues fluctuate with industrial activity and to the extent that progressive rates are employed, the decrease in tax revenues tends to be greater than the declines in buying activity. Due to the time lag between earnings and tax collections, many tax bases tend to decline before the revenues therefrom fall off. Similarly, on the upswing of the cycle the tax bases increase before tax collections begin to increase. This is one of the major problems in connection with defense financing and consumption control.

It matters not how much various governments try to use different forms of taxation—whether income tax, excise, capitation or other levies—they fall upon the resources from which all taxes are paid. The source of tax payments is income and wealth. Nor does it matter what government makes the levy. The resulting burden relative to the source of payment is the thing which counts. Thus, the whole idea of separating revenue sources is nonsense from an economic point of view. The levies in their impact upon resources cannot be separated. The taxes each individual must bear can only be paid from his aggregate of taxable resources—from his income or wealth. The important problem is neither the form or the separate levies nor the unit imposing them, save as functions performed are involved, but rather the burdens imposed. The quest for independent revenue sources is thus not worth undertaking. Better for the individual that the sources be identical or related so that burdens may be more accurately determined.

Cooperation for Constructive Action

If, then, there is no real fiscal independence on the part of political units, what can they do? About all that is left for them is to cooperate, to develop an efficient revenue system with appropriate devices, with central administration and regional execution, accompanied by a large measure of revenue transfers among the various governments. The development of such a system is a major task calling for careful and painstaking research. The systems we now have are the product of a planless and accidental evolution. They are a system in no real sense. They need to be replaced by a system based upon sound fiscal principles adapted to the economic and social conditions under which men now live.

An ideal system does not involve the centralization of every revenue function with the Federal Government. A place will be found for the imposition of taxes by the various governments, but the taxes so allocated should be capable of efficient execution and should fit into and be a part of a common pattern. Complete dependence on transfers would, of course, be of doubtful wisdom, but certainly, instead of being dependent merely upon their own resources, state and local governments should have their revenue requirements considered as a part of the total national exactions rather than as being completely divorced and independent from them.

After the revenues are collected under any

centralized system, of course the problem arises as to how they should be divided among the claimant governments. This can only be accomplished by the development of a system of transfers based on budget principles, in which relative needs are considered. The transfers may be affected by grants, sharing or direct appropriation as is appropriate. Only by the development of such a revenue system can the two major problems confronting our local governments be solved. These problems are: (1) meeting the increased demand for funds; and (2) securing those funds from a well-balanced revenue system.

Problems of the Grant System

Such a system, with heavy reliance upon grants, brings with it difficulties which must be frankly faced. The first difficulty is that of making local governments financially dependent upon units above. To the extent that subordinate units regularly receive grants from central units, they tend to rely upon them in developing expenditure programs. The withdrawal or reduction of such grants places the smaller units at the mercy of the units from which funds have been received. Unless the flow of funds continues, many activities may be impaired. On the other hand, if the expectation of funds is created, central units do not have the freedom in allocating resources which efficient government may require. It is doubtful if vested interests in shared funds should be created, but sharing does provide the opportunity for placing subordinate governments in a sounder fiscal position than they now are.

One of the main difficulties with grants, however, is that they tend to maintain marginal services, marginal areas and marginal units long after the time for their continued existence has passed. For example, the relief grants of federal and state governments have given the township units a new lease on life. State school grants have been responsible for the continued existence of thousands of small, impecunious and inefficient school districts. County government has similarly been subsidized in many States in regions too poor to support local activities. Federal aid to some States, in the North and South, has guaranteed the continued existence of governmental forms in areas too poor to support such service. If funds are transferred between governments, they should not perpetuate the political forms, and the marginal activities of various regions. The forms and activities should change as conditions change.

Current Legislative Sessions

As of November 1, 1941

Now Meeting

Regular Sessions	*Convened*
New Jersey*	January 14

Recent Adjournments

Regular Sessions	*Convened*	*Adjourned*
Massachusetts	January 1	November 1
Michigan	January 1	October 11
Special Sessions		
Texas	September 9	September 19
Vermont	September 10	September 16

*Recessed July 28 to November 13.

One task before us is to develop forms of improved fiscal relationships which will take this into account.

A sensible revenue system, with a division of proceeds does not necessarily involve the continued subsidization of marginal areas and activities. In the development of an improved fiscal system a considerable amount of initiative should be given the state and local units. They need to cooperate in the development of such a plan rather than wait until it is handed down to them from above. They need to realize in the development of that program that they are really not fiscally autonomous, and that for the sake of general welfare they should not be. They need to recognize, too, that they are part of a nation and that in the development of a fiscal system they need to cooperate both in the execution of the revenue functions and in the recognition of the claims of competing and coordinate units for a share of the funds. If, however, all governments join in the movement to improve their fiscal relationships, great improvements in the tax system and in the revenue position of the governments affected will be possible. Fiscal interdependence will be frankly recognized and government should function more efficiently as an integrated whole.

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State Rights and Cooperation

(*Continued from page 263*)

that the problem of the weight and dimensions of motor vehicles is not impossible of solution by the States.

You may be aware of the many achievements of the interstate cooperation movement and its activities in various fields of governmental problems. We have been concerned with liquor control, trade barriers, social welfare and relief, agriculture and milk control, uniform state laws, boundary disputes, interstate waters, oil conservation, pollution, fisheries and many other problems.

Permit me to cite a few examples of accomplishment. This past year seven states along the Atlantic seaboard ratified a marine fisheries compact establishing a commission for the purpose of bringing the regulation of fisheries into conformity. Two years ago, few people believed that such joint action by the States was possible since I assure you that the problem of fisheries is almost as difficult as that of motor vehicle regulation. Similarly, Pennsylvania and New York joined with nine other oil states this year in an interstate compact to prevent the physical waste of oil and gas.

I am happy to state that the States through our Commissions on Interstate Cooperation have carried on a constructive program relating to our national defense. Many States enacted into law a uniform program designed to prevent sabotage . . . control explosives . . . provide for the mobilization of police . . . establish state and local defense councils . . . and to protect public properties. One of the national defense program measures is of particular interest to your organization. It provides for the establishment of a State Traffic Commission with power to regulate traffic and facilitate the movement over the highways of troops, military vehicles and material affecting the national defense. Among other things the traffic commission was empowered to take an inventory of the trucks and buses in the State, publicly and privately owned, which would be available in case of emergency. Incidentally, this measure has received the endorsement of the Federal Public Roads Administration and the War Department.

Time will not permit me to review the many accomplishments in other fields; however, the answer to this success rests in the machinery that we call the Council of State Governments. This machinery consists of the Commissions on Interstate Cooperation in each State composed of legislative and administrative officials. They have been aptly called the "foreign ministries" of the States and are the official agencies of the respective States in dealing with other States. This makes it possible to negotiate and then to secure the adoption of any agreements reached because all branches of our State Governments are represented and participated in the conferences that led to such agreements.

Agreed as we are on the utility of our States, we now find that they are better equipped to demonstrate their effectiveness. State rights demand they be given the opportunity! With that opportunity, the States will be responsible for the fulfillment of their obligation. In the long run, the development of a flexible federal system with state and local governments playing their part in a cooperative pattern might be, not only closer to our American traditions, but a sound basis for the preservation and extension of our American democracy.

Cooperation Wins Battle

(*Continued from page 266*)

action of the other States. Virginia and South Carolina are expected to act favorably on the Compact at their regular sessions in 1942. Maine, Florida, Georgia and North Carolina will consider the agreement in 1943 and it is expected that Connecticut will review its decision at that time.

The four interstate meetings briefly noted in the foregoing paragraphs, represent, in a general way, the four formal steps in the negotiation of the Compact. The first meeting was a preliminary and exploratory step; the second enunciated certain principles, developed a plan of action, and delegated technical work to committees of experts; the third reviewed and discussed the work of the committees and their technical consultants, and asked that it be revised in line with views expressed by the delegates; and the fourth meeting approved the final form of the revised Compact.

These steps, however, were but landmarks in the very delicate and complicated task of drawing up an agreement which would accomplish the stated objectives and yet be acceptable to all the States involved. The success which has greeted the Compact is a tribute to the careful work and sagacity of those who participated in its framing.

Double Domicile Problem

(*Continued from page 269*)

adopted such a statute on a reciprocal basis, and thereafter in *First National Bank of Boston v. Maine*, 284 U.S. 312, the Supreme Court put its approval on this solution by denying constitutional power to any State other than the domicile. Although this judicial approval may only have been temporary in view of the trend illustrated by such recent cases as *Curry v. McCanless*, 307 U.S. 357, and *Graves v. Elliott*, 307 U.S. 383, the fact that many States have retained these reciprocal statutes is likely to prevent a recurrence of the evil of this particular form of multiple death taxes.

Double Domicile Taxation

Another phase of multiple death taxation—so-called "double domicile"—is, however, still with us. This one arises because of the increasing physical mobility of many of our people. Not only investments, but homes, are widespread. Today, it is not uncommon for a person to maintain more than one home. Where is he domiciled? Since, according to the decisions in *Tilt v. Kelsey*, 207 U.S. 43, *Overby v. Gordon*, 177 U.S. 214, and *Thorman v. Frame*, 176 U.S. 350, each State may determine the question of domicile for itself, there is the possibility that upon the death of such a person more than one State will determine that he was domiciled there. Hence two or more domiciliary death taxes may be required to be paid. A graphic illustration of the inequity of this situation is exemplified by the *Dorrance* estate (309 Pa. St. 151, cert. denied, 287 U.S. 660; 116 N.J.L. 301, cert. denied, 298 U.S. 678), where the courts of New Jersey and Pennsylvania each held that the decedent was domiciled in their respective States, and hence the estate was required to pay two domiciliary death taxes on all his intangible property. Among other cases illustrative of the problem are *Texas v. Florida*, 306 U.S. 398; *Matter of Trowbridge*, 266 N.Y. 283; *Matter of Hartshorne*, 171 Misc. 27; and *Matter of Benjamin*, 176 Misc. 518 (Adv. Sh. 113).

It is obvious that it is unfair for the States to subject an estate to more than one domiciliary death tax, since, as heretofore noted, the State of domicile has plenary power to tax decedents' intangibles wherever located. The point is made graphic by noting that in *Texas v. Florida*, if the claims of Massachusetts, Florida, Texas and New York for death taxes had been upheld, not only would there have been nothing left for the heirs, but the estate would not have had enough assets to pay the state and federal death taxes.

Various attempts have been made in the course of the last twenty-five years to find a solution. Most of these, proceeding on the common law theory of "one man—one domicile," have been directed to finding an impartial tribunal to decide which State had exclusive jurisdiction to tax all of the decedent's intangibles.[1] In some cases, with a commendable spirit of cooperation on the part of both, States have submitted themselves to the jurisdiction of the courts of other States.[2] Another solution, rejected by the United States Supreme Court, was to confer jurisdiction on the United States District Courts by suits of interpleader.[3] Third, there was the possibility of an original suit in the United States Supreme Court, as in *Texas v. Florida*. However, it is questionable whether that Court would again take jurisdiction, and, in any event, it would be necessary to show that the death tax claims of the States and the United States exceeded the value of the estate. Another proposal considered was the recommendation of the majority of the Committee of the National Tax Association on Double Domicile in Inheritance Taxation, to the effect that the United States District Court of the District of Columbia be given jurisdiction by act of Congress to decide questions of disputed domicile involving cases of state death taxation, and that the States enact reciprocal statutes to effectuate that plan. This recommendation, reached after five years of study by experts in death taxation, has several objections: It requires action not only by each of the States, but also by the Congress and there may well be difficulty in getting the Congress to function; the States should be able to solve their

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[1] Note another approach—that of splitting up the domicile; cf. Frankfurter, J. dissenting in *Texas v. Florida*, 306 U.S. 398 at page 429; American Bar Association, "Open Forum Proceedings, Mar. 23, 1940," *Taxes*, May, 1940, p. 278; LaFarage, "Multiple Domicils and Multiple Inheritance Taxes," 9 *George Washington Law Review*, 375-388.

[2] *Matter of Lydig*, 191 App. Div. 117; *Matter of Stone*, 135 Misc. 736; *Matter of Lyon*, 117 Misc. 189; *Matter of Trowbridge*, 266 N.Y. 283; *Matter of Hartshorne*, 171 Misc. 27; *Matter of Benjamin*, 176 Misc. 518 (Adv. Sh. 113).

[3] *Worcester County Trust Co. v. Riley*, 302 U.S. 292.

own problems involving state taxation, without going to the Congress and the federal courts; there is no assurance that the District Court for the District of Columbia is any better equipped to handle domicile questions than state courts; it would be a great expense and inconvenience to require distant States to journey to the District of Columbia; and, finally, it is doubtful if the Congress could constitutionally confer power on the District Court for the District of Columbia.

Another solution is one proposed by Commissioner Mark Graves, President of the State Tax Commission of New York. It was worked out at several conferences, including a conference of the ten northeastern States sponsored by the New York State Joint Legislative Committee on Interstate Cooperation. This plan has been embodied in a model reciprocal statute, which is attached hereto. Thus far, the model statute has been enacted in Delaware (Senate Bill 32, *Laws* 1941), and one part of the plan has been adopted in New York (Chapter 280, *Laws* 1941), and in New Hampshire (S. B. 63, *Laws* 1941, s. 1). In Pennsylvania the bill was vetoed, and in Massachusetts the legislature referred it and other matters to a special Commission for study.

Provisions of the Plan

Briefly, the plan is for the States to enact reciprocal statutes providing that in cases of disputed domicile an executor can elect to invoke the statute. The statute provides a comprehensive method of solving these cases. It authorizes the States involved and the executors to enter into a compromise of the death taxes due each State. Where a compromise could not be reached, the question of domicile would be submitted to a board of arbitration, created for the purpose of deciding a particular case. Where two States are claiming domicile, each would appoint a member of the board, and the members so appointed would select a third. Other provisions are made where more than two States are involved. The board would hold such hearings as were necessary, and by majority vote, determine the decedent's domicile. Their determination would be only for death tax purposes and would be final.

This plan is a workable and practical solution to this problem. It is likely that a majority of the cases would be compromised. In such event, each State in considering the amount of its claim would give weight to a number of factors: e.g., time spent in each home, in business, the comparative size of the two homes, etc. Where it would be necessary to have recourse to a board of arbitration, a final determination binding both States could be rendered by an impartial tribunal. It is not unlikely that such a board would be comprised of persons of high calibre qualified to pass on domicile problems. This would not only insure a personnel comprised of persons with experience in domicile cases, but also tend to insure care and impartiality in the decision of the board.

Arbitration Provides Practical Solution

It has been urged in opposition to the plan that the decision of the board of arbitration being final, there is no judicial review. That objection comes chiefly from those who feel that the adoption of a plan providing for a board of arbitration is a confession that the courts are not adequate to solve the problem. The solution proposed by the model act is not a confession that the courts are inadequate, for arbitration between States has been recognized as a practical solution in many cases, saving the time and effort of courts and avoiding the rigidity of legal forms.

Just as the earlier problem of multiple taxation of intangibles was solved by voluntary action on the part of the States through reciprocal statutes, so the present problem can similarly be solved. The States themselves can and should remove inequities from state taxation, less further ammunition be provided to those who seek more and more federal control.

Law Officials Meet

(*Continued from page 272*)

that the Junior Bar Associations in the States might be able to conduct such studies and that in some cases the State Bar Associations might be able to enlist the help of the law schools in the area.

Mr. George G. Bogart, Chairman of the Conference's Committee on Cooperation with the Council of State Governments, reported for the Committee that it was the belief of the Committee that a very considerable influence in the increased adoptions reported this year had been due to the cooperative assistance rendered by the Council of State Governments. On the basis of the record, the Committee recommended the continuance of the cooperative work between the two organizations, and this recommendation received the unanimous approval of the Conference.

The Midwest Dairy Agreement

(*Continued from page 267*)

each of the States involved will accept from, and give full faith and credit to, certificates of inspection and rating from other signatory States, and treat these certificates in the same manner as certificates relating to milk produced within its own boundaries.

During the two years in which the Midwest Dairy Agreement gradually developed into its final form, it was the principal matter of business at three interstate conferences which were held by the Council of State Governments. The technical aspects of the problem were ably handled by the Committee of Dairy Technicians under the chairmanship of Senator Ura Seeger of Indiana, who was later succeeded by Mr. John Taylor, Chief of the Indiana Bureau of Milk and Dairy Products. The Committee received the assistance of Dr. Abraham W. Fuchs and Dr. William H. Haskell of the United States Public Health Service in developing inspection forms suitable for the purposes of the agreement.

The committee decided early in its deliberations that its task was not to establish compulsory dairy regulations, but to develop acceptable standards of excellence to which producers in the States of the Midwest could voluntarily adhere if they wished to sell their milk in new out-of-state markets.

As a basis of its rating system for milk to be used for manufacturing purposes, the Committee selected the standards that have been developed by the United States Public Health Service to apply to Grade "A" raw plant milk. The uniform inspection and certification procedures which were later developed by the Committee and are referred to in the final agreement provide for official recognition of dairy producers which meet the higher standards, not only in their own States, but in other jurisdictions as well.

These officials have formally signed the Midwest Dairy Agreement for their respective States:

Indiana—Lieutenant-Governor Charles M. Dawson, Commissioner of Agriculture, and Dr. John W. Ferree, Director of the State Board of Health.

Iowa—Mark G. Thornburg, Secretary of Agriculture.

Kentucky—William H. May, Commissioner of the Department of Agriculture, and Dr. A. T. McCormack, State Health Commissioner.

Minnesota—R. A. Trovatten, Commissioner of Agriculture, and Dr. A. J. Chesley, Secretary and Executive Officer, State Board of Health.

Tennessee—V. L. Fuqua, Dairy Commissioner, Department of Agriculture.

Wisconsin—L. G. Kuenning, Chief of the Dairy Division, State Department of Agriculture.

The principles of the agreement have the approval of officials in Illinois, Michigan and Ohio, and assurance of cooperation by these States in its operation has been given.

States Study Defense

(*Continued from page 273*)

gional Coordinator of Health, Welfare and Related Defense Activities, led the discussion of this meeting in which the members of the Defense Councils in the region exchanged their experiences and outlined their methods of handling all of the special problems of housing, sanitation and welfare which had arisen as a result of the construction of defense works and Army camps in the west coast area. It was pointed out by the California Defense Council that the San Diego area had presented particularly difficult problems when its population of approximately twenty thousand was increased by fifty per cent within a space of a few months. The development of facilities to handle the situation proved a greater problem than it was possible for the local governmental areas to handle without state and federal aid.

Along with the questions of civilian defense, sub-contracting, priorities, health, welfare and related activities, which have occupied the attention of all of the regional conferences thus far, the Rocky Mountain assembly will also concern itself with subjects of peculiar interest to States of that region. The West's mineral resources for defense will be evaluated, and the significance of the agricultural program in the present emergency and defense problems facing the farmers will be discussed at length.

Governors Ralph L. Carr of Colorado, John Moses of North Dakota and John E. Miles of New Mexico are scheduled to take part in the program. Members of State Defense Councils, Commissions on Interstate Cooperation, state planning agencies and municipal leagues are expected to be present from the States of Colorado, Kansas, Montana, Nebraska, New Mexico, North and South Dakota, Oklahoma, Texas and Wyoming.

WASHINGTON NEWS NOTES

Construction Priorities

IN A RECENT policy statement the Supply Priorities and Allocations Board has made it clear that priorities will be withheld from public as well as private construction not regarded as essential from the standpoint of defense, public health, or safety. Virtually every type of construction is involved—the building of highways and bridges as well as the erection of public buildings of various types. At the same time, priority ratings for the use of certain critical materials such as steel, copper, brass, bronze, and aluminum will be extended in the case of projects under the defense public works plan. The same preferential treatment will be given to projects undertaken by state or local governments without federal assistance if the facilities are required to meet the demands of new defense populations. SPAB has also urged all federal, state, and local agencies to refrain from issuing permits or other authorizations for construction on which priorities would have to be denied. Where construction actually has started and a substantial portion has been completed, efforts will be made to secure enough critical materials to finish the job should any supply problem threaten to hold up the work.

WPA Wage Increase

AS A RESULT of increases in the cost of living, WPA has increased its wage rates approximately 8.5 per cent. This will mean an increase of about $5.20 a month for each worker. The so-called "security" wage developed in September, 1939, is now recognized as being entirely inadequate, particularly so since it was calculated on the basis of the barest essentials. These rates which are now supplemented by the increase, ranged from an extreme low of $31.20 per month for non-skilled laborers in rural sections of the South to $94.90 for professional and technical workers in northern industrial areas. Faced with increased payments to workers and at the same time confronted with the problem of a gradually growing relief load caused by "priorities unemployment," WPA officials doubt that the funds on hand will be sufficient to tide them over the balance of the fiscal year. A deficiency appropriation probably will be necessary.

Stream Pollution Control

A NEW BILL dealing with stream pollution has been introduced in the Senate by Senators White and Brewster of Maine. A companion measure on the House side is sponsored by Congresswoman Smith of Maine. In addition to setting up a federal program of assistance to help state and local governments finance remedial works, the legislation calls for enforcement of purity standards after a three-year period. These purity standards would be prescribed for the various watersheds by a new board to be created in the Public Health Service. The Public Health Service would also be placed in charge of the general administration of the program. To facilitate state action, the measure would extend the consent of Congress to interstate compacts or agreements for the prevention or abatement of stream pollution.

Bus and Truck Inventory

TO OBTAIN detailed information as to the transportation facilities that could be called upon in the event of a military emergency, state registration agencies are assisting the War Department in a nation-wide inventory of trucks and busses. The necessary clerical labor is being supplied by the WPA. Under this survey, cards are being sent to all owners of trucks and busses asking them to report on the vehicles they own, giving information as to size, age, and type. Public as well as private owners are being asked to report. The only vehicles not included in the survey are fire engines and ambulances. The decision to send out questionnaire cards was made after it had been found that, in most cases, state registration records do not supply as much information as the War Department requires to complete the survey.

Supreme Court Cases

IN OPENING its new term, the United States Supreme Court issued rulings in several cases involving state laws and agreed to review other questions involving federal-state relationships. Without a formal opinion, the Court affirmed a Tennessee Supreme Court decision invalidating a large part of the State's inspection charges levied on petroleum products stored within its borders while enroute to destinations in other States. It also sustained the constitutionality of a Kentucky law limiting the gross weight of trucks operating in the state to 18,000 pounds. In accepting an appeal in a Florida case, it has undertaken the task of determining the scope of the Hatch "Clean Politics" Act. In the Florida case the lower courts have held that the act did not apply to primary elections for the nomination of candidates for federal office. Another important case accepted for review is a test of whether construction firms operating under government cost-plus-fixed-fee contracts are subject to state sales and use taxes. In this litigation the appeal was brought from Alabama where a State Supreme Court decision has denied the State the right to apply its taxes to such contractors.

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